

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 298 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.BALIA.

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME TAX

Versus

R.B RODDS & CO LTD.

Appearance:

MR B.J. SHELAT FOR MR MANISH R BHATT for Petitioner
MR JP SHAH for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.BALIA.

Date of decision: 24/01/97

ORAL JUDGEMENT

(per Rajesh Balia, J)

1. At the instance of revenue in R.A. Applications Nos. 202, 203 and 204 of 1983 arising out of IT Appeals 2361, 2362 and 2363/Ahd of 1981 relating to assessment

year 1977-78, 1978-79 and 1979-80, following question of law arising out of its appellate order has been referred to this court for its opinion by the Income Tax Appellate Tribunal, Ahmedabad Bench 'C':

1. "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the liability of Rs.6,64,068/- for A.Y. 77-78, Rs.7,11,199/- for A.Y. 78-79 and Rs.8,50,000/- for A.Y. 79-80 for payment of bonus under the provisions of the payment of Bonus Act 1965 (as amended) was an allowable deduction under the provisions of the Income-tax Act, 1961?"
2. The assessee is a limited company and maintains its books of account on mercantile basis. The assessee claimed various amounts stated in the question respectively for the said assessment years as deduction on account of its liability to pay additional bonus in view of the provisions contained in the Payment of Bonus Amendment Act which came into force with effect from 3.9.1977. Notwithstanding the fact that accounting period for the assessment year 1977-78 ended on 31.3.1977 prior to the coming into force of the aforesaid Act since the liability arising thereunder related to the accounting period ending on 31.3.1977 the assessee claimed deduction of that amount for the assessment year 1977-78 against its profits of that year and accordingly for subsequent year as well the deduction of such bonus was claimed in that very year. The revenue was of the opinion that since liability has come into existence after the close of the previous year it could not be allowable deduction even in case of an assessee following mercantile system of accounting for the assessment year 1977-78. Ultimately plea of the assessee found favour with the Tribunal and the deduction claimed by the assessee was sustained.
3. It has been stated before us by learned counsel for the assessee that since there is no dispute about the eligibility of deduction but dispute is only about the year of allowability and there being no difference in the rate of tax applicable to the company during the relevant periods in question whether the deduction is granted in the years claimed by him or in the succeeding years as contended by department it is not going to alter the position as far as total liability to tax is concerned. His contention is that since the ITO has already

disallowed these deductions in the years in question if the ultimate answer is against him and additions made in assessment orders are sustained, his claim shall have to be allowed in succeeding years, altering the assessment orders in this regard as well so that there is no double disallowance.

4. The fact that decision in this case is not going to alter the position about the tax liability is not disputed by the learned counsel for the revenue as well.

5. In the aforesaid circumstances, we are of the opinion that the question referred to us is of academic importance, which need not be answered by us. We find that in the like circumstance concerning like controversy arising in the case of Rohit Mills Limited vs. CIT reported in 219 ITR 228, this court declined to answer the similar question.

6. In the aforesaid circumstances, we decline to answer the question referred to us on behalf of the revenue.

7. By the same order the Tribunal has also referred the following question of law arising out of IT Appeal No. 2360 of 1981 for the assessment year 1979-80 in Reference Application No.135 of 1983 for our opinion:

2. "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in disallowing the accrued gratuity liability of Rs.6,88,762/- worked on acturial basis?"

7. Learned counsel for the assessee candidly stated that in view of the decision of the Supreme Court in Sajjan Mills Limited vs. CIT reported in 166 ITR 585, the question is to be answered in affirmative that is to say in favour of the revenue and against the assessee. We accordingly answer Question No.2 referred to us at the instance of assessee in affirmative. No order as to costs.